



# Investigation Report

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## Investigation of a complaint against Mid and East Antrim Borough Council

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**NIPSO Reference: 18716**

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## **The Role of the Ombudsman**

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

## **Reporting in the Public Interest**

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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## EXECUTIVE SUMMARY

I received a complaint about the actions of Mid & East Antrim Borough Council's (the Council) decision to grant planning permission for the '*enhancement of existing sports facilities*' at St Patrick's College, Ballymena. The issue of complaint was that the Council ignored a consultation response from Environmental Health (EH), which contained a condition that the facility ought to be closed on Sundays. The complainant asserted that this condition was removed two hours prior to the meeting on 7 September 2017, and that he did not receive an explanation as to why this occurred and at whose request. In addition, he complained that the Council failed to adequately and objectively implement Policy OS4 and Policy OS7 of Planning Policy Statement 8, when assessing the facility's impact on privacy and residential amenity.

### Issues of Complaint

I accepted the following issue of complaint for investigation:

**Issue 1: Whether the processing of the planning application, in relation to a consultation response, was appropriate?**

### Findings and Conclusion

The investigation of the complaint identified maladministration in relation to the following failures to keep full and adequate records of:

- (i) The site visit conducted on 30 August 2017
- (ii) The discussion between the Senior Planning Officer (SPO) and the principal planning officer
- (iii) The meeting between the Council's Environmental Health Officer (EHO) and Principal Environmental Health Officer (PEHO), discussing final consultation response
- (iv) The SPO's consideration of EH's 'final' consultation response
- (v) The SPO's consideration to provide the Planning Committee with an oral update, as opposed to preparing an addendum
- (vi) The SPO's re-consideration of Policy OS4 and his explanation of this to the Planning Committee, following the removal of EH's condition restricting Sunday hours

- (vii) The SPO's consideration of Policy OS7, in relation to the new floodlighting.

In addition I have found maladministration in relation to the:

- (i) Failure of EH to appropriately consider and establish all relevant factors prior to deciding what conditions to include in its 'draft' consultation response, and the inclusion of '*generic standard conditions*'
- (ii) Failure of the planning officer and principal planning officer to recognise that EH's draft consultation was not complete and to identify and record in the Planning Committee report, and therefore on the Planning Portal, that the restriction on Sunday opening hours could not be sustained on planning grounds
- (iii) Failure of the Council to recognise that Sunday opening hours was a relevant planning consideration
- (iv) Failure by the Council to create and implement Planning Department and EH guidance for dealing with changes to consultation responses

I am satisfied that the maladministration I identified caused the complainant to fail to understand the basis for the change in the planning officer's opinion on the planning application. The lack of openness and transparency in the decision making denied him the opportunity to consider the changed EH response and decide if he wished to ask to speak to the Planning Committee. As a result, I consider he experienced the injustice of uncertainty and loss of opportunity. In addition, as a result of the planning officer's change in opinion, I consider he experienced the injustice of time and trouble in pursuing his complaint to my office to be able to receive an explanation as to what transpired in the processing of the planning application.

### **Recommendations**

Having considered the nature and extent of the injustice sustained by the complainant in consequence of the maladministration identified in this report, I recommended the following:

- i. The Chief Executive of the Council issues him with an apology for the failings identified
- ii. The Council makes a payment of £500 by way of solatium

I recommended that the Council should provide the apology and solatium within **one month**.

In order to improve the service delivery of the Council, I also recommended that it consults on and establishes guidance for the Planning Department and EH regarding changes to consultation responses. I recommended that this guidance includes timeframes for how long an amended consultation response ought to be available to the public prior to a Planning Committee Meeting. While outside the scope of this report, I consider that it may be beneficial for the Council to also consider how it considers amended responses for all consultees in this regard.

I recommended that the Council subsequently provides training to relevant staff on good record keeping, to ensure that they have full regard for it, and that the appropriate records are retained.

In addition, I recommended that the Council develops an action plan which outlines the steps considered in implementing my recommendations on the consideration of the training and new guidance, and provides me with an update within **three** months of the date of the final report. That action plan must be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self declaration forms which indicate that staff have read and understood any related policies).

In response to my draft report, the Council stated that it *'accepts that there is always scope for improvement in the management of planning cases and is willing to implement changes to improve the process.'* However, the Council stated that it *'does not agree that [the complainant] experienced the injustice of uncertainty, frustration, upset and time and trouble in pursuing his complaint.'* It stated that *'it is difficult to appreciate any direct correlation between the process and the complaint... the Committee holds the discretionary decision making power to approve the planning application. Furthermore there is no evidence to suggest that the complainant suffered any material impact or detriment.'*

*As a result, the Council stated that it 'does not concur with the recommendations within the report in respect of [the complainant]. The Council does not agree that an apology or solatium is required as redress, given the lack of impact on the complainant.'*

I am extremely disappointed in the Council's response to this issue and I intend to write to the Mayor of the Council in this regard. I also reminded the complainant of his right, under Section 52 of the 2016 Act, to make an application to the County Court for relief.

## THE COMPLAINT

1. A complaint was brought to my office in relation to the Council's decision to grant planning permission for the '*enhancement of existing sports facilities*' at St Patrick's College, Ballymena. The complaint is in reference to a planning application which was received by the Council on 16 June 2017. The complainant stated that the Council ignored a consultation response from Environmental Health (EH), which contained a condition that the facility ought to be closed on Sundays. He complained that this condition was removed two hours prior to the meeting on 7 September 2017, and that he did not receive an explanation as to why this occurred and at whose request. In addition, he complained that the Council failed to adequately and objectively implement Policy OS4 and Policy OS7 of Planning Policy Statement 8, when assessing the facility's impact on privacy and residential amenity.

### Issues of complaint

2. The issue of the complaint which I accepted for investigation was:

**Issue 1: Whether the processing of the planning application, in relation to a consultation response, was appropriate?**

## INVESTIGATION METHODOLOGY

3. In order to investigate this complaint, the Investigating Officer obtained from the Council all relevant documentation together with the Council's comments on the issues raised by the complainant. This documentation included information relating to the Council's handling of his complaint. In addition, interviews were conducted with the Council's Head of Planning (HOP), and the Council's Environmental Health Officer.



## Relevant Standards

4. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.

The general standards are the Ombudsman's Principles<sup>1</sup>:

- (i) The Principles of Good Administration
  - (ii) The Principles of Good Complaints Handling
  - (iii) The Public Services Ombudsmen Principles for Remedy
5. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of the Council whose actions are the subject of this complaint.
  6. The specific standards relevant to this complaint are:
    - (i) Planning Policy Statement (PPS) 8 - Open Space, Sport and Outdoor Recreation, Policy OS 4 Intensive Sports Facilities (February 2004) and Policy OS 7 The Floodlighting of Sports and Outdoor Recreational Activities (February 2004)
    - (ii) Development Management, Practice Note 14, Publicity Arrangements and Neighbour Notification (April 2015) (Practice Note 14)
    - (iii) Development Management, Practice Note 16, The Determination of Planning Applications (April 2015) (Practice Note 16)
    - (iv) Development Management, Practice Note 18, The Consultation Process and Duty to Respond (May 2016) (Practice Note 18)
    - (v) Development Management, Practice Note 20, Use of Planning Conditions (April 2015) (Practice Note 20)
    - (vi) The Council's Protocol for Operation of Planning Committee, Revision 1, March 2015 (the Protocol)

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<sup>1</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

7. In investigating a complaint of maladministration in the planning process, my role is concerned primarily with an examination of the administrative actions of the Council. I am unable to challenge the merits of a decision by a planning authority unless that decision was attended by maladministration. I shared a draft of my report with the Council and the complainant for comment on factual accuracy and the reasonableness of the findings and recommendations.
  
8. The information which has informed my findings and conclusions are contained below. I have considered the responses of the Council and the complainant to my draft report before reaching my final decision. Where relevant to my consideration I have included these responses. How I have weighed the evidence within the context of this complaint is a matter for my discretion. I have not included all of the information obtained in the course of the investigation in this report. However, I am satisfied that everything that I consider to be relevant to this complaint has been taken into account in reaching my findings.

# INVESTIGATION

## Issue 1: Whether the processing of the planning application, in relation to a consultation response, was appropriate?

9. I have considered PPS 8 - Open Space, Sport and Outdoor Recreation<sup>2</sup>, published by the former Department of the Environment for Northern Ireland (DOE<sup>3</sup>) in February 2004, which applied in relation to this application. I specifically note Policy OS4 Intensive Sports Facilities (Policy OS4), which states that all intensive sports facilities must have *'no unacceptable impact on the amenities of people living nearby by reason of the siting, scale, extent, frequency, or timing of the sporting activities proposed, including any noise or light pollution likely to be generated'*.
10. I also note Policy OS 7, The Floodlighting of Sports and Outdoor Recreational facilities (Policy OS7), which states, *'The Department will only permit the development of floodlighting associated with sports and outdoor recreation facilities where... (i) there is no unacceptable impact on the amenities of people living nearby; (ii) there is no adverse impact on the visual amenity or character of the locality'*.
11. In addition, Section 5.52 of Policy OS7 states that *'Where floodlighting is proposed as part of a new sports or recreational development or in association with an existing facility, a number of issues need to be considered. These include the potential for increased use of the facility, light pollution and increased traffic and noise generation. Such issues are particularly relevant where the proposed floodlighting is close to residential properties. The impact of the design and size of the floodlighting structures on visual amenity and their use on the character of the wider area are also important considerations. Particular care needs to be exercised in the*

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<sup>2</sup> Note that this policy was retained following the introduction of the Strategic Planning Policy Statement for Northern Ireland, in September 2015.

<sup>3</sup> The DOE was dissolved on 6 May 2016. Its functions and services were transferred to the Department for Communities, the Department for Infrastructure, and the Department of Agriculture, Environment and Rural Affairs.

*countryside and those areas identified for their landscape, townscape or heritage value.'*

12. I also considered a number of practice notes, which were designed to guide planning officers within councils through legislation and deal primarily with procedures as well as good practice. The practice notes stem from the Planning Act (Northern Ireland) 2011 (2011 Act) and related subordinate legislation.
13. I considered Practice Note 14, published by the DOE in April 2015. Section 4.11 states that *'where amendments or receipt of additional information merit re-advertisement, further neighbour notification should also be carried out.'*
14. I also considered Practice Note 16, published by the DOE in April 2015. Section 4.15 states that examples of material planning conditions include *'consultation responses'*. In addition, Section 4.8 states that *'the Department must formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development'*.
15. In addition, I considered Practice Note 18, published by the Department for Infrastructure in May 2016. In particular section 3, which details the role of consultees:

*'Consultees are required to:-*

- *Provide a substantive response within set timescales;*
- *Comment only on matters relating to material considerations; and*
- *Not burden the development management process with matters related to the requirements of other legislation beyond the control of planning...*

*In addressing the development proposal, planning officers should take consultee responses into account as a material consideration in forming an opinion on the application. The weight to be attached to individual consultee*

*response is a matter of planning judgement which will rest with the determining council.'*

16. Section 4.2 also states that *'consultation responses will be critically examined to ensure that any further information requested is essential to inform a planning assessment of development proposals and ultimately the decision making process. Any consideration of the advice provided, should be documented and considered in the case officer report before a decision is taken.'*
17. I also considered Practice Note 20, published by the DOE in April 2015, which states that *'The objectives of planning... are best served when the power [of imposing conditions] is exercised in such a way that conditions are clearly seen to be fair, reasonable and practicable'*. Section 1.3 states that *'it is essential that the operation of the planning system should command public confidence. The sensitive use of conditions can improve the development management process and enhance confidence.'* In addition, Section 4.1 states that *'a condition ought not to be imposed unless there is a definite need for it.'*
18. I considered the Council's *'Protocol for Operation of Planning Committee'* (the Protocol), which states that *'officers should prepare an addendum on the day of the meeting to report any up-dates since the agenda was issued.'* The Protocol also states that the Planning Committee can decide to defer consideration of a planning application to a later meeting, *'where additional information is required'* or to organise a site visit. In addition, the Protocol states that *'anyone wishing to address the Committee must register their wish to do so with the Councils Chief Administrative Officer/ Committee Clerk by 12 noon two working days before the meeting.'*
19. I have also considered the planning application submitted by the applicant:  
  
***'About your Development Proposal...***

*Enhancement of existing sports facilities to include (dual sport & recreation & physical activity facility for schools & wider community use, consisting of multi use sports area, 3G football pitch, new floodlighting, associated fencing to pitches, dugouts, car parking & associated ground works.'*

20. In addition, I considered the pre-application community consultation, which states that:

*'The floodlighting has been designed in accordance with the current floodlight design guidelines and light spill has been kept to a minimum and is within all design parameters.*

*The proposer feels that this therefore gives a better solution for the residents, whilst still fulfilling the requirements of the use. The proposer would propose a time limit of 10pm for the use of the floodlights.'*

21. I also considered EH's 'Draft' consultation response dated 31 August 2017, which states:

**1. Operational Noise**

*It is noted that this application is for the upgrading of existing facilities currently in use at the school. There is no history of noise complaints from existing use of the facility.*

*This department would suggest that the following condition be added to the decision notice in order to protect the amenity of noise sensitive resident in the vicinity of the application site.*

***Suggested conditions***

***A. The premises shall not be open outside the following hours:-***

***07:00hrs – 22:00hrs Mondays – Fridays***

***07:00hrs – 21:00hrs Saturdays and not at all on Sundays or Public Holidays***

***Reason: to protect the amenity of local noise sensitive dwellings...***

## **2. Light**

*The specification of lighting has been provided within the application documentation. It is noted that the proposed lighting (lux levels) do not extend past the boundary of the application site and should not adversely impact nearby light sensitive residential dwellings.*

*This department would suggest that the following condition be added to the decision notice in order to protect the amenity of light sensitive residents in the vicinity of the application site.*

### *Suggested conditions*

- C. Lighting shall be erected and positioned in accordance with 'Proposed Site Plan' Drawing Number 02, date stamped 16th June 2017 and shall be angled, directed and maintained so as to minimise light pollution from glare.*
- D. Flood lighting shall not be in use prior to 07:00hrs or after 22:00hrs Monday to Sunday...'*

22. In comparison, I considered EH's 'final' consultation response uploaded to the NI Planning Portal on 6 September 2017, which states:

### **'1. Operational Noise**

*It is noted that this application is for the upgrading of existing facilities currently in use at the school. There is no history of noise complaints from existing use of the facility...*

### *Suggested conditions*

- C. The premises shall not be open outside the following hours:-*

*07:00hrs – 22:00hrs Mondays – Fridays*

*07:00hrs – 21:00hrs Saturdays*

*07:00hrs – 18:00hrs Sundays*

*Reason: to protect the amenity of local noise sensitive dwellings.*

### **2. Light...**

*Suggested conditions*

- C. Lighting shall be erected and positioned in accordance with 'Proposed Site Plan' Drawing Number 02, date stamped 16th June 2017 and shall be angled, directed and maintained so as to minimise light pollution from glare.*
- D. Flood lighting shall not be in use prior to 07:00hrs or after 22:00hrs Monday to Sunday...'*

23. I also considered the Neighbour Notification Letter, dated 23 June 2017:

*'Validation & Consultation...*

*Copies of all consultation replies and any representation or objections received are also to be made available on the website upon their receipt...*

*Consideration and recommendation*

*The planning officer having undertaken a site inspection, verified the identified occupiers on site and received all consultees' responses completes his/her report and makes a recommendation. This recommendation takes account of all consultation comments, any representations from third parties and all other material considerations. The application is then discussed and a recommendation agreed by planning officers...*

*You can track the progress and processing of this planning application and view the associated documentation by logging onto the Planning Portal, [www.planningni.gov.uk](http://www.planningni.gov.uk)...*

*If you do not have access to the Planning Portal, you can call into this office during normal office hours and we will make the information available to you at a computer at reception.*

*Alternatively you may view this information or the main planning file at this office. You should note, however, that the main file is a working document and at certain times of the process it will not be immediately available. An appointment is therefore essential and you can make arrangements to view with the Open File Team.'*



24. In addition, I have considered the Planning Committee Report<sup>4</sup>. In particular Section 6, which records a number of issues raised in the neighbours' letters of objection, one of which was *'Hours of use'*. I also note, Sections 7 and 8 which states the following in relation to Policy OS4:

***'7. Consideration and Assessment***

*In all cases the development of intensive sports facilities will be required to meet all the following criteria:*

***There is no unacceptable impact on the amenities of people living nearby by reasons of the sitting, scale, extent, frequency or timing of the sporting activities proposed, including any noise or light pollution likely to be generated;***

*... The frequency of timing for the sporting activities proposed including the noise or light pollution likely to be generated have all been considered by Environmental Health via the consultation process. The upgraded facility will not create an unacceptable impact on nearby sensitive receptors if operated in accordance with the conditions attached to this report...*

***8. Consideration of Representations***

*a) The noise and disturbance has been dealt with by Environmental Health via the consultation process.*

*b) The light pollution has been dealt with by Environmental Health via the consultation process and the submission of floodlighting details as part of the overall application...*

*g) The hours of use has been dealt with by Environmental Health via the consultation process.*

*h) The Planning Department, after careful consideration are satisfied that the proposed application will not have any undue impact regarding the privacy of any neighbouring properties.*

25. In reference to Policy OS7, the Planning Committee Report also states that:

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<sup>4</sup> This report is prepared by the Planning Officer prior to the meeting, detailing his/ her considerations, assessments, recommendations and conclusions in relation to the planning application.

*'The Department will only permit the development of floodlighting associated with sports and outdoor recreational facilities where all the following criteria are met:*

***There is no unacceptable impact on the amenities of people living nearby;***

*The proposal is for the upgrade of an existing use, therefore no impact shall be created regarding the amenity of the surrounding residents.*

***There is no adverse impact on the visual amenity or character of the locality;***

*The sports pitches are an existing use within the site and the development limits of Ballymena. Therefore, the upgrading of these facilities shall have no adverse impact on the visual amenity or the character of the site or the surrounding area...*

#### **8. Consideration of Representations...**

*b) The light pollution has been dealt with by the Environmental Health via the consultation process and the submission of floodlighting details as part of the overall application.'*

26. In addition, I note Section 10 of the Planning Committee Report, *Recommendations and Conditions*, which states that:

*'The planning department recommends that planning permission is approved with the following conditions...*

***C2: The premises shall not be open outside the following hours:-***

*07:00hrs – 22:00hrs Mondays – Fridays*

*07.00hrs – 21:00hrs Saturdays and not at all on Sundays.*

*Reason: In the interest of residential amenity...*

***C4: Lighting shall be erected and positioned in accordance with 'Proposed Site Plan' Drawing Number 02, date stamped 16 June 2017 and shall be angled,***

*directed and maintained so as to minimise light pollution from glare.*

*Reason: In the interest of residential amenity.*

**C5:** *Flood lighting shall not be in use prior to 07:00hrs or after 22:00hrs*

*Monday to Sunday.*

*Reason: In the interest of residential amenity.'*

27. I also considered the minutes of the Council's Planning Committee Meeting on 7 September 2017, with specific reference to the planning application. The minutes record that the Senior Planning Officer (SPO), highlighted *'that Condition 2 had been amended to allow Sunday use'*. It is documented that *'Cllr Mrs Wales and Cllr Jordan sought clarification as to whether residents were going to be affected by this change and whether they had been informed of the change. The SPO advised that there was no obligation to inform objectors and residents could keep themselves informed through the Planning Portal and that the public are not consulted on proposed conditions. He also pointed out that this is an existing facility with no restriction on Sunday use. Cllr B Henry raised concerns that not all residents may have access to the Planning Portal.'*
28. I considered an email from the EHO to the SPO on 30 August 2017, which accompanied the 'draft' consultation response. The EHO stated *'See attached DRAFT response. I've emailed through to get the nod from [the Principal Environmental Health Officer] on this, as wouldn't be the way that I would normally move on an application like this.'*
29. In addition, I considered the Council's response to an email from Councillor Stephen Nicholl<sup>5</sup> on 20 September 2017, which was sent on behalf of a resident. The email sought clarification as to when the amendment for Sunday opening hours was proposed, *'as the residents were not updated of this amendment'*. The Council stated that *"consultation responses are considered a standard part of the planning process and are not regarded as additional information, consequently objectors/neighbours are not notified of such*

*responses... I would also assure you the views of the objectors were fully considered, as set out in the committee report’.*

30. I also considered an email from the Council to Councillors Audrey Wales and Bill Henry<sup>5</sup> on 26 September 2017. In this email the Council offered an explanation as to why the condition restricting Sundays and public holidays in EH’s *‘draft consultation response’* was omitted in its *‘final consultation’*. The Council stated that EH had used *‘generic standard conditions’* in its draft response, and that these were *‘refined to suit the particular circumstances of the case’* in the final response. It stated that the draft condition was included in the Planning Committee Report. However, the Council stated that the Planning Committee was made aware *‘of this error’* and advised of the amended condition.
31. As part of the investigation of this complaint, the Council’s records have been examined. A chronology of the Council’s actions in relation to this complaint has been provided below:

<b>Date</b>	<b>Action</b>
16 June 2017	Planning application received by the Council
22 June 2017	EH consulted about the planning application
23 June 2017	Neighbours notified of the planning application
4 - 7, 17, 18 and 26 July, and 21 August 2017	Letters of objection received from neighbours
30 August 2017	EH’s ‘Draft’ consultation response emailed to Senior Planning Officer, the SPO
31 August 2017	The response date recorded on EH’s ‘Draft’ and ‘Final’ consultation responses
31 August 2017	Planning Committee Report forwarded to Planning Committee

<sup>5</sup> Present at the Planning Committee Meeting on 7 September 2017.

6 September 2017 (11.59am)	EH's 'Final' consultation response uploaded to the Northern Ireland (NI) Planning Portal
6 September 2017 (12.02pm)	EH's 'Final' consultation response uploaded to Tascomi <sup>6</sup>
7 September 2017 (10.00am)	Date of Planning Committee Meeting Planning permission approved by the Council
8 September 2017	The complainant was notified by the Council that planning permission was granted

32. As part of the investigation, the Council was asked to comment on the complaint that it ignored the condition in the EH consultation response, which proposed that the facility ought to be closed on Sundays. In response, the Council stated that it did not ignore the condition relating to Sunday hours. It stated that at the Planning Committee Meeting on 7 September 2017, a *'Senior Planning Officer [the SPO] explained why these conditions would not form part of this decision'* and the Planning Committee agreed *'to remove the conditions'*.
33. The Council was asked to provide copies of its internal policies and/ or procedures relating to changes to consultation responses. The Council confirmed that it did not hold this documentation. In addition, the Council was asked to provide copies of internal policies and/ or procedures used for the determination of planning applications. The Council stated that it did not hold this documentation, and that *'each application is assessed on its own merits'*. On further enquiry, the Council confirmed that it uses Practice Note 16 for determining planning applications.
34. In addition, the Council was asked to explain the role of the EH Officer, when providing a consultation response to the Planning Department. It stated that the *'Planning Department consults with Environmental Health on a planning application if they consider that environmental issues require consideration... [EH] is] a Statutory Consultee with regard to a number of environmental*

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<sup>6</sup> EH's internal software system for assisting with the management of workloads and storing of information.

*issues*, including noise and light pollution. The Council stated that EH responses *'can generally be classified as no objection, recommendation of approval with informative, recommendation of approval subject to conditions, or recommending refusal.'*

35. The Council was also asked to provide copies of policies and/ or procedures used by EH, when conducting its consultation review. The Council confirmed that *'at the time of consultation, Environmental Health had no documented policy regarding [the] review of planning consultations'*. In addition, the Council was specifically asked to identify the guidance EH followed when a consultation review raised issues relating to noise, or when it needed to consider imposing conditions restricting opening hours and/ or days.
36. In response, the Council confirmed that *'there is no directly applicable guidance or planning policy document relating to the assessment of noise from sports pitches. Generic guidance on planning matters related to sport and recreational facilities is given in PPS 8, Open Space, Sport and Outdoor Recreation, though specific guidance on noise is not given.'* The Council stated that *'the main noise sources associated with multiuse games areas, are... Ball impacts on fence, people noise (players and spectators), and tonal noise such as whistle blows.'* It explained that this planning application had existing facilities *'namely [an] all-weather sports pitch'* and the facility was *'being used for the activities applied for in the planning application. For this reason a full noise impact assessment was not required of the applicant.'*
37. The Council stated that as a result, EH *'sought to control the proposed activities to maintain local amenity to noise sensitive dwellings'*, by suggesting the conditions detailed within its 'final' consultation response. It stated that the *'grounds for these suggested conditions are taken from the guidelines of daytime specifications within noise impact guidance documents such as: World Health Organisation Guidelines for Community Noise; British Standard BS4142:2014 Methods for rating and assessing industrial and commercial sound; and British Standard BS 8233: 2014 Guidance on sound insulation and noise reduction for buildings.'*

38. In relation to timings, the Council explained that *'these documents generally refer to daytime being [the] 16 hour period from 07:00hrs until 23:00hrs and night time period being 23:00hrs until 07:00hrs. They give guidance that community annoyance is more likely in evenings and on weekends, but do not generally restrict activities occurring at these times.'* As a result, the Council stated that EH's 'final' consultation response's suggested condition A *'allows control of noise by means of controlling hours of operation. In conjunction with suggested condition B, there is a good level of control for any annoyance during daytime hours, by means of complaint requirement for assessment and mitigation to be taken if noise levels affect a specific noise sensitive dwelling adjacent to the proposed development.'*
39. The Council also stated that the suggested conditions within its 'final' consultation response *'were considered in line with DoE Development Management Practice Note 20: Use of Planning Conditions, April 2015.'* It noted Section 4.1, which states that *'a condition ought not to be imposed unless there is a definite need for it'*, and highlighted that *'the application under consideration was an enhancement of an existing sports facility, for which we had not received any complaints in relation to its current operation, nor was this current operation restricted by any current planning conditions.'*
40. The Council also stated that *'in recommending approval subject to conditions: i.e. restriction of hours of use and a complaint condition, these were deemed to have met the six tests for conditions: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.'*
41. As part of investigation enquiries, the Council was asked to provide copies of internal policies and/ or procedures relating to the amendment of conditions within consultation responses. The Council confirmed that EH did not hold this documentation. It was also asked to provide a copy of EH's records relating to the consultation review process. The Council provided the following documentation:

- (i) EH's 'final' Consultation Response, including Sunday opening hours, dated 31 August 2017
- (ii) EH's 'draft' Consultation Response, excluding Sunday opening hours, dated 31 August 2017
- (iii) Three screenshots of EH's internal planning system, Tascomi<sup>6</sup>:
  - The first screenshot provides an overview of the planning application e.g. application reference, date received, location, applicant, completion date etc. The system records the following dates:

Action	Date
Date of Application	16 June 2017
Date Received	22 August 2017
Target Response Date	12 September 2017
Response Date	31 August 2017
Completed Date	31 August 2017

- The second screenshot shows two versions<sup>7</sup> of the EH consultation response uploaded to the system. The documents' file names are:
  - o 2017.08.31\_-\_LA0220170572F\_-\_Sports\_Pitches\_-\_St\_Patricks\_College\_-\_Broughshane\_Road.pdf
  - o 2017.08.31\_-\_LA0220170572F\_-\_Sports\_Pitches\_-\_St\_Patricks\_College\_-\_Broughshane\_Road.docx
 The system records that both documents were uploaded on 6 September 2017; and
- The third screenshot displays the audit activity of the actions conducted on the Tascomi system, between 31 August and 6 September 2017. It shows that the two versions of the EH consultation response (detailed above) were uploaded to the system on 6 September 2017 at 12.02pm. No further actions are recorded on the system during this timeframe.

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<sup>7</sup> A PDF file and a Microsoft Word document.



42. I refer to the complaint relating to the Council's notice in relation to the removal of EH's consultation condition. In response to the complaint that EH's condition in relation to Sunday hours was *'removed two hours prior to the meeting'*, the Council stated that this was not the case. It stated that *'no recommendation was changed two hours in advance of the Planning Committee.'*
43. The Council stated that the Planning Committee Report *'was prepared and forwarded to Members one week in advance of the Planning Committee'*. It confirmed that this report was based on the draft EH consultation response, which excluded Sunday opening hours. The Council stated that prior to the Planning Committee Meeting, a final response was received from EH on 6 September 2017, which permitted Sunday opening. It confirmed that this final response was uploaded to the NI Planning Portal at 11.59am on 6 September 2017, and was available to the public to view via 'Public Access' at this time.
44. In addition, the Council stated that as *'there was no time to amend'* the Planning Committee Report in advance of the Planning Committee Meeting. It stated that the Planning Committee was informed of the changes at the meeting on 7 September 2017. The Council was also asked to confirm if an addendum was provided at the Planning Committee Meeting to report on updates since the Planning Committee Report was issued. In response, the Council stated that *'it was not considered necessary as the [Planning Committee Meeting's] agenda had not changed'*.
45. As part of investigation enquiries, the Council was asked to comment on the Protocol, specifically in relation to speaking rights. It stated that *'the protocol for someone who wishes to register speaking rights to address the Planning Committee is that they must register their wish to do so... by 12 noon two working days before the meeting.'*
46. The Council was subsequently asked to comment on how decisions are taken to defer meetings if last minute changes are made, in order to allow individuals time to review those changes and register speaking rights. The

Council stated that there is no protocol for this, as *'no protocol could cover every eventuality and may be liable to abuse by those wishing to frustrate the decision making process.'* It stated that *'each application will need to be dealt with in its own merits and decisions taken on a case by case basis as to whether the application should be withdrawn from the agenda.'*

47. In addition, the Council stated that *'in some instances when late information is received, it may be sufficient to advise the Planning Committee during the meeting and leave it for the Committee to decide if they wish to defer the application for further consideration, if new material planning considerations are raised, it may be necessary to withdraw the application from the agenda to allow further consideration and public consultation.'* It stated that *'it all depends on the nature of the late changes, some may be trivial or vexatious whereas others may be material which go to the heart of the decision and therefore require further consideration.'*
48. The Council also stated that *'when applications are withdrawn from the agenda or deferred by the Planning Committee, members of the public will be able to register speaking rights when the application returns to the Planning Committee for consideration.'* In this instance, the Council confirmed that *'the Planning Committee did not give any consideration to a deferral of this planning application.'*
49. I refer to the Council's consideration of Policies OS4 and OS7 in relation to the planning application. As part of investigation enquiries, the Council was asked to comment on the issue raised by the complainant, that Policies OS4 and OS7 were not adequately and objectively implemented. The Council responded, stating that the Planning Committee Report was a *'comprehensive assessment'* of both policies. Section 7, of the Planning Committee Report records the following in relation to Policy OS4, and the impact on the amenities of people living nearby: *'The frequency of timing for the sporting activities proposed including the noise or light pollution likely to be generated have all been considered by the Environmental Health via the consultation process. The upgraded facility will not create an unacceptable impact on*

*nearby sensitive receptors if operated in accordance with the conditions attached to this report.'*

50. In addition, in reference to Policy OS7, the Planning Committee Report states that *'the proposal is for the upgrade of an existing use, therefore no impact shall be created regarding the amenity of the surrounding residents... [and] the upgrading of these facilities shall have no adverse impact on the visual amenity or the character of the site or the surrounding area...'*
51. As part of the investigation, interviews were conducted with the Council's Head of Planning (HOP), and the Council's Environmental Health Officer (EHO), on 19 and 20 February 2019 respectively.
52. I refer to the meeting between the HOP and the Investigating Officer on 19 February 2019. At that meeting the HOP was asked to provide an overview of the process of preparing a planning committee report, and to explain how this report is issued to the Planning Committee members. He explained that on receipt of an application, the assigned planning officer will identify the occupiers of neighbouring lands, and the appropriate consultees. The HOP stated that notification letters will be sent to the neighbours, and consultations are issued. Upon receipt, he advised that all consultation replies and objections are made available to the public on the Northern Ireland Planning Portal (the Portal).
53. Having completed a site visit, the HOP stated that the planning officer will review the consultation responses, write the report and make a recommendation. The HOP stated that the planning officer will subsequently hold an internal meeting with the principal planning officer to ascertain which planning applications are ready to go to the Planning Committee. He advised that he occasionally attends these meetings. However, the HOP stated that he was not present during the internal discussion of this planning application. In response to a request for records or evidence of this meeting, the HOP stated that there was no record or evidence of the meeting. He explained that the Council do not usually makes notes of these internal meetings. Following

this, the HOP explained that the Planning Committee Report is forwarded to the Planning Committee a week before the meeting, and made available to the public on the NI Planning Portal at the same time.

54. As part of investigation enquiries, the HOP was also asked to explain why EH sent the SPO a 'draft' consultation response on 30 August 2017. The HOP explained that the EHO sent the consultation response while the PEHO was not in the office. As a result, the response was marked as 'draft' until it was reviewed by the PEHO on her reflection. The HOP stated that the restriction on Sunday hours had been included in error by the EHO, and that this was corrected following the PEHO's review.
55. The HOP stated that the restriction on Sunday opening hours was wrongly included in the condition, as the facilities were already in use on a Sunday. He advised that the restrictions were initially included due to religious/moral reasons, which were deemed inappropriate by planning, and not legally valid in these circumstances. The HOP explained that the consultation response needed to be changed, as the planning office could not justify the consultation restrictions.
56. As part of the investigation, a meeting was held with the EHO and the Investigating Officer on 20 February 2019. By way of investigation enquiries, the EHO was also asked why a draft consultation response was forwarded to the SPO on 30 August 2017. He explained that there appeared to be an issue in relation to timeframes, and the SPO had asked him to advise if there were any potential EH issues in relation to the planning application. The EHO confirmed that he commented that *'it wouldn't be the way I would normally move on an application like this'*, in his accompanying email. That is because he was of the view that this is not the way a EH consultation response would usually be processed. The EHO also stated that it wasn't a particularly uncommon way to process a consultation response either.
57. As a result, the EHO explained that he provided a 'draft' consultation response, with the work he had completed to date. The EHO stated that he

clearly referenced that the consultation response as '*draft*', to ensure that it would not be identified by planning as a final response. He stated that the only response to be used by the Planning Department was the 'final' version that has uploaded to the planning portal. In addition, the EHO confirmed that he sent the 'draft' consultation to the SPO, following a site visit, which was conducted by the two individuals on 30 August 2017. The EHO stated that there was no documented evidence of this site visit.

58. The EHO was asked by the Investigating Officer to explain why he included a condition restricting Sunday opening hours in his 'draft' consultation response. He explained that this was in relation to operational noise. On review, the EHO stated that the facility was well established, and there had been no history of noise complaints. However, given that the new facility would likely cause a considerable rise in occupancies, the EHO stated that he decided some controls would be needed. As a result, the EHO suggested that the facility was closed on a Sunday.
59. The EHO advised that EH has planning guidance which officers follow for consultation responses. He stated that the suggested conditions used in the 'draft' consultation response were '*standard*' controls, and acknowledged that standard conditions do not fit all responses. The EHO explained that the condition '*to not open on Sundays*', was a restrictive condition for this facility, and on reflection he considered that it was '*not reasonable*.' He stated that he checked with the PEHO, who had more knowledge of the area and facility, and she confirmed that Sunday is, and would be, the facility's busiest day. As a result, the EHO stated that the EH consultation was updated to allow Sunday usage. During the interview, the EHO also confirmed that the facility was used by both the school and the local community.
60. Subsequently, the EHO was asked to provide evidence of his internal discussions with the PEHO, or notes detailing how he made the decision to amend the condition. The EHO confirmed that there were no records or evidence of this discussion.

## Responses to draft report

61. On 29 March 2019, I issued my draft investigation report to both the complainant and the Council for comment on factual accuracy. The comments submitted by both the complainant and the Council were taken into account as part of my final consideration of this complaint. I note that the Council's response to my draft report was significantly delayed, and required numerous follow ups. A final response was received from the Council on 5 June 2019.
62. The Council stated in its response that it accepted that *'there should have been a record of the site meeting [on 30 August 2017] in accordance with standard practice.'* In addition, it stated that it *'is content to develop a protocol to govern the engagement between Planning and Environmental Health in relation to planning applications.'* The Council explained that EH was previously considered *'an external consultee'*, and stated that *'there is potential to improve the relationship between both internal departments in light of the changes.'* It stated that it *'accepts that recommendation in respect of training and the development of guidance between the Planning and Environmental Health Departments.'*
63. In relation to the meeting between the SPO and the Principal Planning Officer, the Council stated that following the transfer of planning powers *'the primacy of the group meeting has diminished due to the fact that all decision making powers remain with the Committee... Formalised agendas and minutes are not required and would indicate a formality this meeting does not require.'* It stated that *'given that the draft consultation response did not raise any issues with the principle of the development, the application was progressed to Council.'*
64. The Council also stated that *'there was no request by [the] Planning Department that EH amend its 'draft' response. The EHO in providing an initial response to the Planning Case Officer on 30 August 2017 clearly stated that this was a draft consultation response and he needed to consult his Principal EHO, upon her return from leave.'* It stated that *'at this stage it was known that this existing facility already operated on a Sunday and therefore it was*

*unreasonable to restrict Sunday use, furthermore there was no [sic] there is no guidance or policy that specifically restricts usage on Sundays.'*

65. The Council stated in its response that EH *'believes it considered all relevant factors'* in its consultation response. It stated that *'the issues of operational noise and light were considered in the draft document and the final response. Please advise as to what relevant factors were not taken into account in the draft response.'* The Council also stated that *'the suggested conditions were considered in line with DoE Development Management Practice Note 20: Use of Planning Conditions, April 2015.'*
66. In response to the SPO's consideration of EH's final consultation response, the Council stated that he *'verbally reported [the response]... removing Sunday opening restriction, to the Planning Committee, which ensured the committee made an informed decision.'* It also stated that *'Policy OS4 was fully considered within the case officer's report. Given that there was no material change to the proposed development as a consequence of the amended consultation response, no reconsideration was necessary.'* The Council stated *'that Sunday opening hours is not considered to be a relevant material planning consideration. The critical issue which has not been recognised is that there was no change in impact, therefore, it did not give rise to reassessment.'* Further, the Council stated that *'Policy OS7 was fully considered in the case officer's report.'*
67. The Council also stated that *'the application under consideration was an enhancement of an existing sports facility, for which we had not received any noise complaints in relation to its current operation, nor was this current operation restricted by any noise related planning conditions. In recommending approval subject to conditions: i.e. restriction of hours of use and a complaint condition, these were deemed to have met the six tests for conditions... These controls by way of conditions, in particular the imposition of the complaint condition, were intended to provide protection to the amenity of local noise sensitive dwellings.'*

68. The Council stated that it considers *‘that an addendum was [not] required in relation to this application. The Protocol for the Operation of the Planning Committee states that “if necessary, officers will prepare and addendum on the day of the meeting to report any updates since the agenda issued”.*’ It stated that *‘this discretion is designed to cover minor updates where an oral update or advisory from the Planning Department within the meeting is sufficient. The Council remains of the view that the oral update to the meeting was sufficient in this case.’*
69. In relation to the consideration of re-advertising or deferring the planning application, the Council stated that *‘it contends that there was no requirement to re-advertise as the proposal did not change in light of the consultation response. Furthermore, any deferral of the planning decision is ultimately a decision for the Planning Committee.’*
70. In addition, in the complainant’s response, he questioned the PEHO’s comment that Sunday was the facility’s busiest day. He stated that he has *‘lived here since 2002 and only on a rare occasion would the facility be used on this day, even when it was it would only be for around two hours.’* He asked *‘what baseline evidence the EH used to measure current usage in order to arrive at a recommendation regarding the potential disruption to those living near the pitch.’*
71. The complainant also requested advice as to *‘how the decision to award the current planning permission can be halted, to enable the agreed planning permission to be revisited’* by the Council.

### **Analysis and Findings**

72. I will consider the complainant’s issue of complaint under the following headings:
- (i) the Council’s consideration of the condition in EH’s consultation response;
  - (ii) the Council’s notice in relation to the removal of EH’s consultation response;
  - (iii) the Council’s consideration of Policy OS4; and



(iv) the Council's consideration of Policy OS7.

**(i) The Council's consideration of the condition in EH's consultation response**

73. As part of investigation enquiries, I note that the EHO was asked to explain the difference between EH's 'draft' and 'final' consultation responses. The EHO explained that he forwarded a 'draft' version of the consultation response to the planning officer on 30 August 2017, as the SPO asked if there would be any potential issues in relation to the application. I note the EHO stated that he clearly marked the response to this request as 'draft', to ensure that it would not be used as a final version.
74. I also note that the EHO stated that the 'draft' consultation response was forwarded to the SPO, following a site visit conducted by the two individuals on 30 August 2017. I note that the EHO confirmed that there was no documented evidence of this site visit. I consider the absence of records detailing the site visit is contrary to the Third Principle of Good Administration, *'being open and accountable'*. This principle requires public bodies to keep *'proper and appropriate records'* and *give 'reasons for decisions'*. I consider this failing constitutes maladministration. In response to the draft response, I note the Council accepted that *'there should have been a record of the site meeting [on 30 August 2017] in accordance with standard practice.'*
75. In addition, I note the EHO stated that he included a condition restricting Sunday opening hours in the 'draft' consultation response, as he considered that the new facility would cause a rise in occupancies, and therefore an increase in operational noise. As a result, the EHO considered a control restricting Sunday use would be required. I note the EHO stated that he used *'standard'* controls to complete the 'draft' consultation response. I also note an email to Councillors' Audrey Wales and Bill Henry on 26 September 2017, in which the Council reaffirmed that EH used *'generic standard conditions'* in its 'draft' consultation response. On review of EH's 'draft' consultation response, I also note that one of the conditions states that *'Flood lighting shall not be in use prior to 07:00hrs or after 22:00hrs Monday to Sunday'*.

76. I refer to Practice Note 20, which the Council confirmed was used to consider the conditions within EH's 'final consultation response. It states that the inclusion of conditions ought to be *'exercised in such a way that conditions are clearly seen to be fair, reasonable and practicable'*, and they *'should command public confidence... a condition ought not to be imposed unless there is a definite need for it.'* The inclusion of a condition is a discretionary decision which I cannot challenge unless it is attended by maladministration. However, discretionary decisions must be evidence based and meet good practice requirements to *'take account of all relevant considerations... and balance the evidence appropriately'* when making decisions.
77. In response to the draft report, I note the Council stated that *'at this stage it was known that this existing facility already operated on a Sunday and therefore it was unreasonable to restrict Sunday use furthermore there was no [sic] there is no guidance or policy that specifically restricts usage on Sundays.'* Therefore, I consider that EH should have had access to the planning history of the facility prior to submitting its 'draft' consultation response. If the facility was already in use on a Sunday, I consider that this ought to have been reflected in EH's response. This leads me to question if EH took sufficient steps to establish all relevant facts prior to submitting its 'draft' consultation response.
78. I also note the Council stated there is no guidance or policy that specifically restricts Sunday usage. I consider that this leads me to question why EH included the condition restricting Sunday hours in its 'draft' consultation response. It is the responsibility of any party putting a document to Council to ensure that it is accurate and consistent with relevant policies or guidelines. I also must question whether the EHO gave proper consideration to the EH consultation response, as a condition restricting the use of floodlighting from Monday to Sunday was included, even though there was a condition restricting Sunday use completely.
79. I consider the failure of EH to properly consider and establish all relevant facts prior to submitting its consultation response contrary to the First Principle of

Good Administration '*getting it right*'. This principle requires public bodies to act '*take account of all relevant considerations, ignore irrelevant ones and balance the evidence appropriately.*'

80. Following receipt of the 'draft' consultation response, and write-up of the planning report, I note the HOP stated that an internal meeting took place between the SPO and his principal planning officer. I note the HOP stated that the purpose of this meeting was to ascertain which reports were ready to go to the Planning Committee. I note that following this meeting, the SPO's planning report was forwarded to the Planning Committee, even though a 'draft' consultation response had been received from the EHO.
81. As part of investigation enquiries, the HOP was also asked to provide evidence of the meeting between the SPO and his principal planning officer. I note he stated that there was no documented evidence as the Council does not make notes of these internal meetings. This opinion was reaffirmed in the Council's response to the draft report, in which it stated that '*Formalised agendas and minutes are not required and would indicate a formality this meeting does not require.*'
82. I accept that these meeting do not require unnecessary formalisation. However, I note the Neighbour Notification Letter states '*The planning officer having... received all consultees' responses completes his/her report and makes a recommendation... The application is then discussed and a recommendation agreed by planning officers.*' Therefore, I consider that it would be good practice for the Council to make a record detailing the discussion between the SPO and the Principal Planning Officer.
83. I consider the absence of full and adequate records detailing this contrary to the Third Principle of Good Administration, '*being open and accountable*'. This principle requires public bodies to keep '*proper and appropriate records*' and give '*reasons for decisions*'. I consider the failure of the Planning Department to keep a record of its discussion and decision making constitutes maladministration. The recording of reasons for decisions is a key tenet of good administration and good governance. I consider the recording of such

discussions and their inclusion on the planning portal is consistent with the principle of openness and transparency, which is important to build public trust and confidence in the planning process.

84. I also refer to Practice Note 18, which states that consultation responses ought to be taken *'into account as a material consideration in forming an opinion on the application'*. It states that consultation responses ought to be *'critically examined'* to ensure that all of the information required to inform a planning assessment is obtained, and all considerations *'should be documented and considered'* in the Planning Officer's report prior to making a decision. In addition, I note that the Neighbour Notification Letter stated that *'the planning officer having undertaken a site inspection... and received all consultee responses completes his/ her report and makes a recommendation. This recommendation takes account of all consultation comments'*.
85. I consider the failure of the SPO and the principal planning officer to examine and recognise that EH's consultation response was not yet complete, and that it therefore it was premature for the report to go to the Planning Committee contrary to the First Principle of Good Administration, *'getting it right'*. This principle requires public bodies to *'follow their own policy and procedural guidance'* and *'take account of all relevant considerations'*.
86. I note the Council stated that *'given the draft response did not raise any issues with the principle of the development, the application was progressed to Council.'* However, I note that the HOP stated that it was agreed at this meeting that EH's 'draft' consultation response would need to be changed, as the Planning Department could not justify the restrictions on Sunday usage. Therefore, I consider that EH's condition recommending a restriction on Sunday opening hours ought to have been *'critically examined'* and *'considered'* by the Planning Department in its Planning Committee report. I consider that the Planning Department ought to have identified that it deemed this condition inappropriate for this facility, and recorded this in its report prior to circulating it to the Planning Committee. I consider this failure contrary to the First Principle of Good Administration, *'getting it right'*, which requires

public bodies to take *'reasonable decisions, based on all relevant considerations.'*

87. I consider the Planning Department's failure to identify that EH's consultation response was not complete, and to identify and record in the Planning Committee report that the complete restriction on Sunday opening hours could not be sustained on planning grounds was not appropriate and constitutes maladministration. As I cited above, it is the responsibility of any party putting a document to a council to ensure that it is accurate. As noted in paragraph 83, I am critical of the fact that there was no record of the discussion between the SPO and the Planning Officer. This is the point at which I would expect issues such as those noted above to be addressed.
88. As detailed above, the EHO stated that standard controls were used in the 'draft' consultation response, and acknowledged that these controls do not meet all purposes. The EHO stated that he subsequently updated the 'final' EH consultation response, to include restricted Sunday opening hours, following a discussion with the PEHO. I note the EHO stated that the *'restrictive condition' was 'not reasonable'*, as the existing facility was used on a Sunday. I note that Planning and EH gave different reasons explaining the inclusion of the restriction on Sunday opening hours. The HOP stated that the standard condition restricting Sunday opening was initially included by EH due to religious/moral reasons, however the EHO stated that it was included to address operational noise.
89. I note the Council also confirmed that the planning application was for *'existing facilities in place... and the facility is being used for the activities applied for in the planning application. For this reason a full noise impact assessment was not required of the applicant.'* I note the Council stated that the restrictions set out in the 'final' EH consultation response *'sought to control the proposed activities to maintain local amenity to noise sensitive dwellings'*, and adhered to specific noise guidelines. In its response, I note the Council also stated that EH's suggested conditions *'were deemed to have met the six tests for conditions'*.

90. When asked by the Investigating Officer to provide evidence of his discussion with the PEHO, the EHO confirmed that there was none. In addition, on review of EH's 'draft' consultation response I have identified the EHO's decision-making in relation to operational noise, light and construction noise, relating to the restriction on Sunday use. However, EH's 'final' consultation response, which was amended to include Sunday opening hours, provides no explanation or evidence to demonstrate why the condition was changed.
91. As a result of the lack of records to support the decision making process in this case, I have been unable to conclude that EH gave consideration to all of the relevant factors prior to setting the conditions in its 'final' consultation response. I am critical of EH's lack of contemporaneous records. In response to the draft report, I note that the complainant questioned the PEHO's comment that Sunday was the facility's busiest day. He asked '*what baseline evidence the EH used to measure current usage in order to arrive at a recommendation regarding the potential disruption to those living near the pitch.*' As a result of the lack of EH's record keeping, I have been unable to confirm what evidence was considered. I also note that there was no record of a noise assessment provided in the documentation provided to my office.
92. I consider EH's lack of record keeping in relation to the changes to the 'final' consultation response and the meeting between the EHO and the PEHO, contrary to the Third Principle of Good Administration, '*being open and accountable*'. This principle requires public bodies to keep '*proper and appropriate records*' and give reasons for decisions. I consider these failings constitute maladministration.
93. I note EH uploaded its 'final' consultation response to the Portal on 6 September 2017.
94. The Council stated that, on 7 September 2017, the SPO explained to the Planning Committee why EH's condition restricting Sunday opening hours would not form part of its decision making. However, on review of the

documentation provided by the Council, there is no evidence of the SPO's consideration of the removal of this condition prior to the meeting.

95. At the time of the Planning Committee Meeting, I note the SPO's report considered EH's condition restricting Sunday opening hours. I note that this report was not updated to include the SPO's consideration following the removal of this condition, as the Council stated '*there was no time to amend*'. In addition, I note the Planning Committee Meeting minutes do not document the SPO's reconsideration of EH's condition allowing Sunday opening hours.
96. I consider the absence of full and adequate records detailing the SPO's consideration of the updated EH consultation response to determine whether there was change in impact, contrary to the Third Principle of Good Administration, '*being open and accountable*'. This requires public bodies to '*create and maintain reliable and usable records as evidence of their activities*.' I consider this failure constitutes maladministration.
97. The Planning Committee Meeting minutes record that the SPO, '*highlighted that Condition 2 had been amended to allow Sunday use*' and '*Cllr Mrs Wales and Cllr Jordan sought clarification as to whether the residents were going to be effected by this change*'. It is recorded that the SPO explained that '*this is an existing facility with no restriction on Sunday use*'. As detailed under '*The Council's consideration of Policy OS4*' and '*The Council's consideration of Policy OS7*' below, I note that although this was an application for '*an existing facility*', there were new enhancements such as floodlighting.
98. I note the Council stated that as a result of the SPO's explanation, the Planning Committee agreed that the facility would be opened on Sunday, and the Planning Committee subsequently granted full planning permission. I refer to Practice Note 18, which states that '*the weight to be attached to individual consultee response is a matter of planning judgment which will rest with the determining council*'.
99. I am aware that decision as to the weight afforded to EH's conditions are a matter for the discretion of the Planning Committee. It is clear that the

Planning Department considered the proposal and exercised discretionary judgement based on the evidence presented at the meeting. I am also mindful that the facility was already in use on a Sunday. I accept that this available evidence ultimately led to a discretionary decision to approve the planning application. However, as noted above, I find the absence of evidence and reasoning to explain this departure from the draft decision constitutes maladministration. The absence of records to explain the decisions has resulted in a lack of transparency surrounding this decision.

100. In response to investigation enquiries, I note the Council stated it did not have internal policies and/ or procedures relating to the implementation of planning applications by the Planning Department, or for EH's review of planning consultations. However, I note the Council stated that the Planning Department uses Practice Note 16 for determining applications. In relation to this planning application, I also note the Council stated that EH had '*generic guidance*' on planning matters relating to sport and recreational facilities, which referenced noise. In addition, the Council has stated that EH's grounds for the suggested conditions in the 'final' consultation response were taken from a number of set guidelines.
101. I also note the Council specifically stated that the Planning Department and EH did not have internal guidance relating to amendments to consultation responses. I find this absence of relevant policies of significant concern. I consider that the Council's failure to create and implement guidance for staff to deal with amendments to consultation responses contrary to the First Principle of Good Administration '*Getting it right*'. This principle requires public bodies to take '*proper account of established good practice.*'
102. In response to the draft report, I note the Council accepted that it '*is content to develop a protocol to govern the engagement between Planning and Environmental Health in relation to planning applications.*' I welcome this commitment.
103. As detailed above, I have found the following failings in the part of the Council in relation to the issue complained of:



- (i) the Council's failure to keep full and adequate records of the site visit, the discussion between the SPO and the principal planning officer, the meeting between the EHO and the PEHO, and the SPO's consideration of EH's final consultation response
- (ii) Failure of EH to appropriately consider and establish all relevant factors prior to deciding what conditions to include in its 'draft' consultation response, and the inclusion of *'generic standard conditions'*
- (iii) Failure of the planning officer and principal planning officer to recognise that EH's draft consultation was not complete and to identify and record in the Planning Committee report, and therefore on the Planning Portal, that the restriction on Sunday opening hours could not be sustained on planning grounds
- (iv) the Council's failure to establish guidance for changes to consultation responses

104. I am satisfied that the maladministration I identified caused the complainant to fail to understand the basis for the change in the planning officer's opinion on the planning application. The lack of openness and transparency in the decision making denied him the opportunity to consider the changed EH response and decide if he wished to ask to speak to the Planning Committee. As a result, I consider he experienced the injustice of uncertainty and loss of opportunity. In addition, as a result of the planning officer's change in opinion, I consider he experienced the injustice of time and trouble in pursuing his complaint to my office to be able to receive an explanation as to what transpired in the processing of the planning application.

**(ii) The Council's notice in relation to the removal of EH's consultation response**

105. I note the complainant stated that EH's condition in relation to Sunday hours was *'removed two hours prior to the meeting.'* In response, the Council stated that *'no recommendation was changed two hours in advance of the Planning Committee.'*

106. The Council stated that the 'final' EH consultation response, which contained an amended recommendation relating to permitting Sunday opening hours, was uploaded to the NI Planning Portal on 6 September 2017 at 11.59am. I note the Tascomi system records EH's consultation completion date as 31 August 2017. This is also the *'Date of Response'* recorded in the draft and final versions of EH's consultation response, and the date used in the file names of the 'final' consultation response documents uploaded onto Tascomi. In comparison, I note that Tascomi's audit trail records that EH's 'final' consultation response was uploaded on 6 September 2017.
107. As noted in paragraph 101, the Council confirmed it did not have internal guidance relating to changes to consultation responses. However, the Neighbour Notification Letter stated that *'copies of all consultation replies... are... to be made available on the website upon their receipt'*. As evidenced above, EH uploaded the 'final' consultation response to its internal system on 6 September 2017. In addition, the Council evidenced that it uploaded the final EH consultation response to the NI Planning Portal on 6 September 2017 at 11.59am. I note the planning committee meeting was on 7 September 2017. **I therefore do not uphold the complaint that the condition was removed two hours before the meeting.**
108. The Council stated that the Planning Committee was notified of the changes to EH's consultation response at the Planning Committee Meeting on 7 September 2016. I note that during the Planning Committee Meeting, two councillors sought clarification as to whether the residents were informed of the decision to remove the condition restricting Sunday opening hours. The SPO stated that *'there was no obligation to inform objectors'*, residents could keep informed via the NI Planning Portal, and *'the public are not consulted on proposed conditions'*.
109. In addition, I note that on 20 September 2017, Councillor Stephen Nicholl sought clarification as to when the amendment for Sunday opening hours was proposed, *'as the residents were not updated of this amendment'*. I note the Council replied stating that *"consultation responses are considered a*

*standard part of the planning process and are not regarded as additional information, consequently objectors/neighbours are not notified of such responses... I would also assure you the views of the objectors were fully considered, as set out in the committee report'.*

110. On review of the available evidence, and as per Section 4.11 of Practice Note 14, as there were no amendments to the original application and additional information was not submitted by the planning applicant, then the Council was not required to re-advertise the planning application. I note the Council has confirmed that *'there was no requirement to re-advertise as proposal did not change in light of the consultation response.'*
111. I also refer to the Council's Protocol, which states that the Planning Committee can choose to defer consideration of a planning application to another meeting if a site visit is required or *'where additional information is required'*. The Planning Meeting minutes do not record that the Planning Committee requested additional information or a site visit. Therefore, I am of the opinion that the Planning Committee did not consider that deferral of this planning application was required.

**(iii) The Council's consideration of Policy OS4**

112. I note that the complainant said that the Council failed to adequately and objectively implement Policy OS4 of Planning Policy Statement 8, when assessing the developments impact on privacy and residential amenity. In relation to the Council's consideration of Policy OS4, I note that Section 7 of the Planning Committee report details the criteria that an intensive sports facility has to meet prior to being developed. Alongside each of the required criteria, the SPO has documented how each principle has been considered and met.
113. In particular, I note that one of the criteria states that there ought to be *'no unacceptable impact on the amenities of people living nearby by reason of... frequency or timing of the sporting activities proposed, including any noise or light pollution likely to be generated.'* In response, the SPO has recorded that

*'The proposal is for the upgrade of an already existing use within the area, therefore the siting, scale and extent of the proposal are acceptable in principle.'* I note that the EHO confirmed during his interview with the Investigating Officer that the facility was used by the school and the community prior to the proposed upgrade.

114. In addition, the SPO has stated that *'the frequency of timing for the sporting activities proposed, including the noise or light pollution likely to be generated have all been considered by the Environmental Health via the consultation process. The upgrade facility will not create an unacceptable impact on nearby sensitive receptors if operated in accordance with the conditions attached to this report'*.
115. On review, I note that there is no evidence of the considerations taken by EH, other than to state that there was *'no history of noise complaints from existing use of the facility'*. However, this consideration did not reflect the impact that the intensification of use of the facility, as a result of the new floodlighting, would have on operational noise.
116. The Council stated that the Planning Committee report was prepared a week prior to the Planning Committee meeting. I note that it stated that the report was based on the 'draft' EH consultation response, which excluded Sunday opening hours, and that there was no time to amend the report in advance of the Planning Committee Meeting. Therefore, the criteria to ensure there was *'no unacceptable impact on the amenities of the people living nearby by reason of... frequency or timing of the sporting activities proposed'*, appears to have been assessed using the 'draft' EH condition, excluding Sunday opening hours. I note Policy OS4 also states that *'sports facilities... can attract large numbers of people, particularly in the evenings and at weekends.'* I also note this condition was suggested by EH *'to protect the amenity of noise sensitive residents in the vicinity of the application site.'*
117. During his interview, I note the EHO stated that the 'draft' EH consultation response was updated to allow Sunday opening hours, as the facility was

currently being used on Sundays, and it would have been restrictive to add such a condition. However, I note that there is no documented evidence of the SPO's reconsideration of Policy OS4, following EH's updated consultation response, or his explanation of this to the Planning Committee.

118. In response to the draft report, the Council stated that *'Sunday opening hours is not considered to be a relevant planning consideration. The critical issue which has not been recognised is that there was no change in impact, therefore, it did not give rise to reassessment.'* I refer to Section 4.15 of Practice Note 16, which states that examples of material planning considerations include consultation responses. I consider the Council's failure to identify that Sunday opening hours was *'a relevant planning consideration'*, contrary to the First Principle of Good Administration *'getting it right'*. This principle requires public bodies to *'follow their own policy and procedural guidance.'* **I consider this failing constitutes maladministration.**
119. In addition, although Policy OS4 does not specifically refer to Sunday opening hours, I consider that the SPO should have reassessed what impact the change in *'frequency'* and *'timing'* of the opening hours had on *'the amenities of the people living nearby'*. I consider that the SPO should have recorded his consideration of EH's final response prior to the planning meeting, even if it was to state that the change had no impact other than amendment to the condition, and this should have been drawn to the committee's attention. I consider this failure contrary to the Third Principle of Good Administration, *'being open and accountable'*. This principle requires bodies to keep *'proper and appropriate records'* and give reasons for decisions. I consider this failing constitutes maladministration.
120. I note that if EH and the Planning Department had identified that the complete restriction on Sunday opening hours could not be sustained prior to sending the planning report to the committee, then this issue would not have arisen.
121. I also note the Council's Protocol states that *'if necessary, officers should prepare an addendum on the day of the meeting to report any up-dates since the agenda was issued.'* However, the Council stated that it did not provide an

addendum as it *'was not considered necessary as the agenda had not changed... the oral update to the meeting was sufficient in this case.'* In the interest of openness and transparency, I consider that the planning officer should have recorded his decision making, when deciding that an oral update was appropriate in these circumstances. I consider this failure contrary to the Third Principle of Good Administration, *'being open and accountable'*. This principle requires public bodies to *'be open and truthful when accounting for their decisions and actions. They should state their criteria for decision making and give reasons for decisions.'*

122. Due to the maladministration I have identified in relation to the lack of records, I am unable to conclude or be satisfied that Policy OS4 was appropriately considered by the SPO in the context of the facility being opened on a Sunday. I also note that the SPO has relied on the EH response in his report to conclude on the impact of the development. My investigation has established a lack of contemporaneous records by EH as to what factors it considered in arriving at the view expressed in its response to the consultation on the application.
123. I am satisfied that the lack of records detailing the consideration of Policy OS4, and subsequent uncertainty regarding the consideration of Policy OS4 in relation to Sunday opening hours, has caused the complainant to experience the injustice of uncertainty and time and trouble in pursuing his complaint to my Office.

**(iv) The Council's consideration of Policy OS7**

124. I also note that the complainant complained that the Council failed to adequately and objectively implement Policy OS7 of Planning Policy Statement 8, when assessing the developments impact on privacy and residential amenity.
125. In relation to the Council's consideration of Policy OS7, Section 7 of the Planning Committee report details the criteria that a development with floodlighting associated with sports and outdoor recreational facilities must

meet. Alongside each of the required criteria, I note the SPO has documented how each criteria has been considered and met.

126. In particular, I note that one of the criteria states '*There is no unacceptable impact on the amenities of people living nearby.*' In response, the SPO has stated that '*The proposal is for the upgrade of existing use, therefore no impact shall be created regarding the amenity of the surrounding residents.*' In addition, another criteria point states that '*There is no adverse impact on the visual amenity or character of the locality.*' Again, the SPO has stated that the facility is '*an existing use*' and as such '*the upgrading of these facilities shall have no adverse impact on the visual amenity or the character of the site or the surrounding area.*'
127. Although this planning application relates to the upgrading of an existing facility, I note that the facility did not previously have floodlighting. I refer to Section 5.52 of Policy OS7, which states that '*where floodlighting is proposed... in association with an existing facility, a number of issues need to be considered. These include the potential for increased use of the facility, light pollution and increased traffic and noise generation.*' I note that the SPO's responses to the criteria do not reference EH's consultation conditions in relation to light. As a result, there is no documented evidence of the SPO's consideration of Policy OS7, with regard to the new floodlighting and the fact that this may have led to an intensification of use. I consider this contrary to the Third Principle of Good Administration, '*being open and accountable*'. This principle requires bodies to keep '*proper and appropriate records*' and give reasons for decisions. **I consider this failing constitutes maladministration.**
128. The absence of records is a persistent feature of this case. This creates uncertainty in relation to whether the SPO has properly considered the effect of floodlighting on the amenity of nearby residents, and presented this to the committee. The Planning Committee report does not evidence the SPO's consideration of the EH consultation response, when determining Policy OS7's criteria in relation to the new floodlighting. In the absence of evidence

to the contrary, I conclude that the planning report did not evidence that the SPO gave appropriate consideration to the issue in presenting the matter to the Council.

129. However, I note that EH's suggested conditions in relation to floodlighting have been included as recommended conditions in section 10 of the Planning Committee Report. This suggests that, although the SPO has not recorded evidence of his consideration, he appears to have reflected on the impact of floodlighting on residential amenity. In addition, it suggests that the Planning Committee has also considered the impact of the new floodlighting.
130. On review of EH's 'draft' and 'final' consultation responses, I note that they both contain the same floodlighting conditions. One of the conditions states that *'Flood lighting shall not be in use prior to 07:00hrs or after 22:00hrs Monday to Sunday'*. I also refer to the pre-application community consultation, which stated that *'the proposer would propose a time limit of 10pm for the use of the floodlights.'* Therefore, I consider that the SPO and the Planning Committee have given consideration to the timing of the flood lighting usage. In addition, I note that the removal of EH's condition restricting Sunday hours, does not appear to have had an impact on this particular condition, as it was already considered for Sunday usage.
131. An additional condition states that *'Lighting shall be erected and positioned in accordance with 'Proposed Site Plan' Drawing Number 02, date stamped 16 June 2017 and shall be angled, directed and maintained so as to minimise light pollution from glare.'* I refer to the pre-application community consultation which stated that *'the floodlighting has been designed in accordance with the current floodlight design guidelines and light spill has been kept to a minimum and is within all design parameters. The proposer feels that this therefore gives a better solution for the residents, whilst still fulfilling the requirements of the use.'*
132. I note that this addresses Sections 5.51 and 5.52 of Policy OS7, which state that *'Care must be taken... to ensure that such development will not cause unacceptable harm to amenity... where floodlighting is processed... in*



*association with an existing facility, a number of issues need to be considered. These include the potential for increased use of the facility, [and] light pollution... Such issues are particularly relevant where the proposed floodlighting is close to residential properties.* As a result, it appears that the SPO and the Planning Committee have considered the effects of the new floodlighting on residential amenity.

133. I am satisfied that the lack of records evidencing the SPO's consideration of Policy OS7, with regard to the new floodlighting, has caused the complainant to experience the injustice of uncertainty, and time and trouble in pursuing his complaint to my Office.
134. I note the complainant also requested advice as to *'how the decision to award the current planning permission can be halted, to enable the agreed planning permission to be revisited'* by the Council. Legislation places certain constraints on my ability to act. A complaint to my office does not constitute an appeal about the quality of the planning decision, nor is it for me to question the legality of such a decision. Ultimately it is for the complainant to take advice on how to challenge the decision taken by the Council in relation to this application.
135. In response to the draft report, I note the Council stated that it did not agree that the complainant experienced the injustice of uncertainty, upset and time in trouble in pursuing his complaint. As demonstrated above, there have been numerous instances where maladministration has caused him injustice. As a result, I do not agree with the Council's perspective and I am disappointed that the Council have not accepted my independent impartial view.

## CONCLUSION

136. A complaint was submitted to me about the Council's decision to grant planning permission at St Patrick's College, Ballymena.
137. I have investigated this complaint and have found maladministration in relation to the following failures to keep full and adequate records:
- (i) The site visit conducted on 30 August 2017
  - (ii) The discussion between the SPO and the principal planning officer
  - (iii) The meeting between the EHO and the PEHO, discussing the 'final' consultation response
  - (iv) The SPO's consideration of EH's 'final' consultation response
  - (v) The SPO's consideration to provide the Planning Committee with an oral update, as opposed to preparing an addendum
  - (vi) The SPO's re-consideration of Policy OS4 and his explanation of this to the Planning Committee, following the removal of EH's condition restricting Sunday hours
  - (vii) The SPO's consideration of Policy OS7, in relation to the new floodlighting.
138. In addition I have found maladministration in relation to the:
- (viii) Failure of EH to appropriately consider and establish all relevant factors prior to deciding what conditions to include in its 'draft' consultation response, and the inclusion of 'generic standard conditions'
  - (ix) Failure of the planning officer and principal planning officer to recognise that EH's draft consultation was not complete and to identify and record in the Planning Committee report, and therefore on the Planning Portal, that the restriction on Sunday opening hours could not be sustained on planning grounds
  - (x) Failure of the Council to recognise that Sunday opening hours was a relevant planning consideration
  - (xi) Failure by the Council to create and implement Planning Department and EH guidance for dealing with changes to consultation responses.

139. I am satisfied that the maladministration I identified caused the complainant to fail to understand the basis for the change in the planning officer's opinion on the planning application. The lack of openness and transparency in the decision making denied him the opportunity to consider the changed EH response and decide if he wished to ask to speak to the Planning Committee. As a result, I consider he experienced the injustice of uncertainty and loss of opportunity. In addition, as a result of the planning officer's change in opinion and the lack of openness and transparency, I consider he experienced the injustice of time and trouble in pursuing his complaint to my office to be able to receive an explanation as to what transpired in the processing of the planning application.

### **Recommendations**

140. I recommend that the Chief Executive of the Council issues the complainant with an apology in accordance with the NIPSO guidance on apology. This is for the failings identified, and should be issued within **one month** of the date of my final report.
141. In addition, I recommend that the Council makes a payment of £500 by way of solatium for redress in respect of the injustice I have identified for uncertainty, loss of opportunity, and time and trouble. The payment should be made within **one month** of the date of my final report.
142. I am disappointed to note that despite an indication to the contrary, and although the Council accepts some of the learning from my investigation, it refuses to accept my findings and recommendation for an apology or solatium for the injustices I have identified. The Council stated that it does not consider that there was an impact on the complainant. I have therefore reminded him of his right, under Section 52 of the 2016 Act, to make an application to the County Court for relief.
143. I consider there are a number of lessons to be learned which provide the Council with an opportunity to improve its services. I recommend it consults on and establishes guidance for the Planning Department and EH regarding

changes to consultation responses. I also recommend that this guidance includes timeframes for how long an amended consultation response ought to be available to the public prior to a Planning Committee Meeting. While outside the scope of this report, I consider that it may be beneficial for the Council to also consider how it considers amended responses for all consultees in this regard.

144. I recommend that the Council subsequently provides training to relevant staff on good record keeping, to ensure that they have full regard for it, and that the appropriate records are retained.
145. I recommend that the Council develops an action plan which outlines the steps considered in implementing my recommendations on the consideration of the training and new guidance, and provides me with an update within **three** months of the date of the final report. That action plan must be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self declaration forms which indicate that staff have read and understood any related policies).
146. The Council stated that it *'accepts that there is always scope for improvement in the management of planning cases and is willing to implement changes to improve the process.'* However, the Council stated that it *'does not agree that [the complainant] experienced the injustice of uncertainty, frustration, upset and time and trouble in pursuing his complaint.'* It stated that *'it is difficult to appreciate any direct correlation between the process and the complaint... the Committee holds the discretionary decision making power to approve the planning application. Furthermore there is no evidence to suggest that the complainant suffered any material impact or detriment.'*
147. As a result, the Council stated that it *'does not concur with the recommendations within the report in respect of [the complainant]. The Council does not agree that an apology or solatium is required as redress, given the lack of impact on the complainant.'*

148. I do not accept the assertions of the Chief Executive that there is a *'lack of impact'* on the complainant in this case. Whether or not injustice has been caused by the maladministration I have identified is a matter for me as Ombudsman to decide. Injustice is not defined in the 2016 Act. I refer to the debate on the 1967 Bill that established the Parliamentary Ombudsman, Sir Richard Crossman said, *'We have not tried to define injustice by using such terms as 'loss or damage'. These may have legal overtones which could be held to exclude one thing which I am particularly anxious shall remain – the sense of outrage aroused by unfair or incompetent administration, even where the complainant has suffered no actual loss. We intend that the outraged citizen shall have the right to an investigation, even where he has suffered no loss or damage in the legal sense of those terms, but is simply a good citizen who has nothing to lose and wishes to clear up a sense of outrage and indignation at what he believes to be maladministration.'*
149. In these circumstances, I am satisfied that the complainant sustained the injustice of uncertainty, loss of opportunity, and time and trouble as a result of the Council's maladministration.

*Marie Anderson*

**MARIE ANDERSON**  
Ombudsman

**July 2019**

**PRINCIPLES OF GOOD ADMINISTRATION**

**Good administration by public service providers means:**

**1. Getting it right**

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

**2. Being customer focused**

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

**3. Being open and accountable**

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

#### **4. Acting fairly and proportionately**

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

#### **5. Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

#### **6. Seeking continuous improvement**

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.